

REMARKS

Claims 32-48 are pending in this patent application.

The Office Action objects to Applicants' use of the word "set" in claims 32 and 40. However, absent some reason to believe that the meaning of the word would not be clear to those skilled in the art, Applicants request that no amendment to the claims be made.

Claims 32-48 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over the claims of various patents and a patent application. Applicants request that these rejections be deferred pending some identification of allowable subject matter, as they likely can be readily resolved (depending upon the subject matter ultimately allowed) through the filing of a suitable terminal disclaimer.

The Examiner has rejected claims 32-39 as allegedly obvious over an abstract of JP 406009388A, assigned to Kodama KK ("the Kodama abstract") that refers to a sustained release oxybutynin hydrochloride pharmaceutical preparation. Applicants request reconsideration of this rejection because there are numerous aspects of the claimed inventions that the Kodama abstract neither discloses nor suggests.

For example, the Kodama reference does not so much as mention delivering a dosage form of oxybutynin at a substantially zero order rate of release. Rather, the Kodama reference provides only a generic disclosure of "sustain[ed] release." Given this deficiency, the rejection of claims 32-29 for alleged obviousness under § 103(a) is improper and should be withdrawn. *In re Payne*, 203 U.S.P.Q. 245, 255 (C.C.P.A. 1979) (references relied upon to support rejection under § 103 must place the claimed invention in the possession of the public); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974) (all limitations set

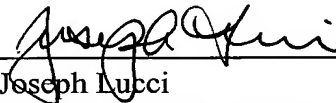
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forth in a patent claim must be taught or suggested in the prior art to establish a prima facie case of obviousness).

In view of the foregoing, Applicants submit that the pending claims are in condition for ready allowance, and therefore respectfully request an early indication of allowability.

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